

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

UNITED STATES OF AMERICA,  
Appellant.

vs.

BERLIN AND RUSSELL AIRCRAFT MA-  
CHINE AND MANUFACTURING COM-  
PANY, a co-partnership, CHARLES T. RUS-  
SELL and INTERCONTINENT AIRCRAFT  
CORPORATION

Appellees.

Transcript of Record

Upon Appeal from the District Court of the  
United States for the Southern District  
of California, Central Division.

APR - 2 1942

PAUL P. O'BRIEN,

CLERK



No. 10049

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Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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### For Appellee Debtor:

CHARLES PECKHAM, Esq.,  
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433 South Spring Street,  
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### For Appellee Charles T. Russell:

ARTHUR H. DEIBERT, Esq.,  
705 Subway Terminal Building,  
417 South Hill Street,  
Los Angeles, California.

### For Appellee: Intercontinent Aircraft Corporation:

MESSRS. O'MELVENY & MYERS,  
GRAHAM L. STERLING, JR., Esq.,  
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433 South Spring Street,  
Los Angeles, California. [1\*]

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

District Court of the United States for the Southern  
District of California, Central Division

No. 38270-H

In the Matter of BERLIN AND RUSSELL AIR-  
CRAFT MACHINE AND MANUFACTUR-  
ING COMPANY, a co-partnership,  
Debtor.

PARTNERSHIP PETITION FOR AN AR-  
RANGEMENT (CHAPTER XI, SECTION  
323), FOR DEBTOR IN POSSESSION, AND  
FOR RESTRAINING ORDER.

To the Honorable Judges of the District Court of  
the United States for the Southern District of  
California, Central Division:

The petition of Hubert M. Berlin and Charles T.  
Russell of Los Angeles, California, respectfully  
represents:

1. Your petitioners — hereinafter referred to  
herein as “The Debtor”—are copartners, engaged  
in the business of manufacturing airplane parts  
(under the NATIONAL DEFENSE PROGRAM) and file this  
petition jointly in behalf of said partnership only  
and not in behalf of themselves individually.

2. The debtor has its principal place of business  
at 705 Subway Terminal Building, Los Angeles,  
California, and its manufacturing plant at 2348 East  
38th Street, Vernon, California.

3. The debtor is not a municipal, railroad, in-  
surance or banking corporation or a building and  
loan corporation.



4. No bankruptcy proceeding, initiated by petition or otherwise by or against the debtor or your petitioners or either [2] of them, is now pending and that the debtor is unable without further extension of time to file its schedules of assets and liabilities.

5. The debtor is solvent but is, at this time, unable to pay its debts as they mature and proposes an arrangement with (a) its unsecured creditors and (b) its secured creditors as to such amounts, only, as are now due, and which will become due under certain installment contracts during the limited period necessary to complete this arrangement.

6. The debtor's said business is, at present, a profitable one and is now making more than enough profit to (a) pay all labor charges in full as they accrue (Note: This business is now employing more than seventy-five persons and anticipates the employment of more than two hundred persons by the end of July, 1941.), (b) to hereafter pay for all materials as they are needed and (c) to repay all loans, including the proposed new loan, within a period of not more than one year. That said business will thereafter not only be a profitable one to your petitioners but will also be extremely valuable to the National Defense Program. That the outstanding unsecured obligations of the debtor aggregate the approximate sum of Thirty-six Thousand Dollars (\$36,000.00). (Note: This sum excludes the unsecured obligation of Charles T. Russell, one of

your petitioners herein, in the amount of Forty-three Thousand Dollars (\$43,000.00), of which more later.) Of this said sum, approximately Twenty-three Thousand Dollars (\$23,000.00) is now past due and approximately Thirteen Thousand Dollars (\$13,000.00) is now on current account.

That the outstanding secured obligations against the debtor aggregate the approximate sum of Thirty-five Thousand Dollars (\$35,000.00). These obligations are as follows, to wit: [3]

- (a) A chattel mortgage on certain equipment to the Bank of America .....\$24,500.00

This is payable in monthly installments of \$1000.00 due on the 6th of each and every month; there is now a \$1000.00 payment past due as of March 6, 1941.

- (b) Conditional sales contracts on machinery .....\$11,150.00

These contracts are with Smith-Booth-Usher, Eccles & Davies, Shaw-Palmer-Bakewell & Co., and Machinery Sales; there is now approximately \$1400.00 due on these contracts and the payments are approximately \$900.00 per month hereafter.

The debtor's employees are paid in full to date and will continue to be paid in full, as their wages

accrue, from the profits of the operation of this business.

The assets of the debtor are in the approximate amount of One Hundred Seventeen Thousand Five Hundred Dollars (\$117,500.) in addition to which the debtor has a backlog of definitely committed defense orders, not all yet in the process of manufacture, in the approximate amount of Forty-seven Thousand Dollars (\$47,000) (Note: Your petitioners have every reason to believe that by the end of April, 1941, the debtor will have a backlog of orders in excess of One Hundred Fifty Thousand Dollars (\$150,000.)—this estimate is particularly based on connections with officials of Northrop Aircraft, Ryan Aeronautical Co., and Harlow Aircraft Co.)

Your petitioners are convinced that the debtor will be making a net profit of between Four Thousand Dollars (\$4000.00) and Five Thousand Dollars (\$5000.00), PER MONTH, beginning with the middle of July, 1941. [4]

7. The present financial difficulties of the debtor are the result of management troubles and inefficiency (a) in the purchase of unnecessarily large quantities of machinery and tools, (Note: Said machinery and tools will, under pending orders, now become of value.) and (b) in the acceptance of unprofitable defense program contracts which have now been fulfilled, although at a substantial loss. These management troubles have now been rectified by the discharge of the parties who were re-

sponsible, therefor no unprofitable contracts are now being accepted.

8. Your petitioner, Charles T. Russell, is informed and believes and therefore represents that he will be able to borrow enough money to make the hereinafter proposed arrangement equitable, feasible and possible; however, a reasonable length of time is necessary to enable this petitioner (Charles T. Russell) to complete negotiations and obtain said loan.

Said petitioner, Charles T. Russell, also represents that he is the debtor's largest unsecured creditor, the debtor being indebted to him in the sum of approximately Forty-three Thousand Dollars (\$43,000.00.)

Said petitioner, Charles T. Russell, offers to and will waive any and all payments of principal and interest on said sum of Forty-three Thousand Dollars (\$43,000.00), PROVIDED SAID ARRANGEMENT IS ACCEPTED AND CONFIRMED, until all other creditors are paid in full.

The affidavit of Charles T. Russell, setting forth these facts in detail, is attached hereto marked "Exhibit A" and by this reference made a part hereof as fully as though set forth at length herein. [5]

9. The debtor should be allowed to remain in possession of said business and continue to operate the same because the debtor has now eliminated wasteful methods, unprofitable contracts and inefficient management; that Charles T. Russell is the founder of the business and the largest creditor, and

is more familiar with the operation of this business than anyone else would be; in fact the continued success of this business depends directly on him. The debtor has also contracts with the various aircraft manufacturing plants such as Ryan, Lockheed, Douglas, Vultee, Vega and Northrup, and is now regularly in receipt of continuing profitable contracts from said firms and others and this is directly due to the fact that said aircraft manufacturing plants now have explicit confidence in the ability of the debtor's plant to produce the parts, dies, etc., and to do the machine work that is required by said aircraft manufacturing plants. Many of these contracts would be irrevocably lost if any change in the present executive management were to be made herein.

10. Your petitioners are informed and believe and therefore represent that a number of the creditors of the debtor have threatened to attach the property and assets of said debtor or to otherwise proceed against the debtor's said property and assets, and that if they and each of them are not enjoined and restrained by the Honorable Court that said creditors will so harass, hinder and delay the debtor in the manufacture of articles for the National Defense that the said debtor will be unable to continue in business and also unable to successfully complete this arrangement. [6]

Second: All unsecured debts affected by this arrangement shall be treated on a parity, except that of Charles T. Russell.



Third: The debtor proposes:

(a) To pay all wages, administration expenses and for all materials as these charges accrue, from the profits of the business.

(b) To pay unsecured creditors not less than sixty per cent (60%) in cash on or before June 1, 1941, and to pay the remainder within one hundred fifty (150) days thereafter.

(c) To pay the unpaid balances due to the secured creditors as they mature AFTER the 1st of June, 1941, under existing conditional sales contracts and chattel mortgages. Re installments past due as of June 1, 1941, the debtor proposes to pay on or before said June 1, 1941, not less than sixty per cent (60%) in cash on said unpaid installments, and to pay the remainder thereof within one hundred fifty (150) days thereafter.

Fourth: The debtor further proposes that your petitioners, and particularly Charles T. Russell, should, and must, if the proposed arrangement be carried out, remain in possession of the debtor's assets and all of them and should continue the maintenance and operation of the business with all of the title and exercising all of the rights and powers of a trustee appointed under the Bankruptcy Act, subject, however, at all times to the control of the court and to such recommendations, restrictions, terms and conditions as the court may from time to time prescribe. That all executory contracts that it may be advantageous to cancel, be cancelled, and

that all unprofitable operations, if any, of the debtor be suspended and set aside at the option of the debtor, with the approval of the court. [11]

Fifth: The court shall retain jurisdiction until all the provisions of this arrangement, after its confirmation, have been performed.

Wherefore, your petitioners pray that proceedings may be had upon this petition in accordance with the provisions of Chapter XI of the Act of Congress relating to Bankruptcy (1) approving the debtor's petition as having been properly filed in good faith; (2) that an order be made and entered continuing your petitioners in possession and giving directions for the conduct of the debtor's business during the pendency of these proceedings; and (3) for such other and further relief as may be deemed meet and proper.

BERLIN AND RUSSELL  
MACHINE AND MANUFACTURING COMPANY, a co-partnership,

By: HUBERT M. BERLIN  
Petitioner, Hubert M. Berlin  
CHARLES T. RUSSELL  
Petitioner, Charles T. Russell  
CHARLES PECKHAM  
Attorney for Petitioners

United States of America  
Southern District of California  
Central Division—ss.

Hubert M. Berlin and Charles T. Russell, the petitioners named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true to the best of their knowledge, information and belief.

HUBERT M. BERLIN

Petitioner

CHARLES T. RUSSELL

Petitioner

Subscribed and sworn to before me this 3rd day of April, 1941.

[Seal]

JUNE EDDY

Notary Public in and for the County of Los Angeles, State of California.

My commission expires March 1, 1945. [12]

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EXHIBIT A

[Title of District Court and Cause.]

AFFIDAVIT OF CHARLES T. RUSSELL

United States of America  
Southern District of California  
Central Division—ss.

Charles T. Russell, with offices at Suite 701-707  
Subway Terminal Building, in the City of Los An-



geles, County of Los Angeles, State of California, being first duly sworn according to law, deposes and says:

1. That he was the founder and is now the chief creditor (in the amount of \$42,885.00) of the business known as and carried on under the fictitious trade name of Berlin and Russell Aircraft Machine and Manufacturing Company, a copartnership, the members of which are Hubert M. Berlin and Himself;

2. That he is informed and believes that he can borrow sufficient money to make the Arrangement, for which a Petition is being filed by himself and the said Hubert M. Berlin trading as Berlin and Russell Aircraft Machine and Manufacturing Company, equitable, feasible, and possible, and for that purpose and in that connection he requests a reasonable amount of time to complete pending negotiations and actually obtain a loan sufficient to pay all creditors of the said copartnership, except himself, which negotiations are now actively under way with several different groups of persons; [13]

3. That the plant of the said copartnership is well-equipped to perform important and necessary functions in connection with the national defense program, and that all of its present orders are from aircraft and other companies engaged in national defense work;

4. That, provided an Arrangement is accepted and confirmed, and pending the acceptance and confirmation of such Arrangement, he offers to and

will waive any and all payments of principal and interest on said debt of the said copartnership to him in the amount of \$42,885.00, until all other creditors of said copartnership have been paid in full;

5. That with Hubert M. Berlin he originated and was instrumental in building up the business of the said copartnership and believes that the said business will not be as profitable without his management, as it will be if he is permitted to continue such management.

CHARLES T. RUSSELL

Affiant

Subscribed and sworn to before me this 3rd day of April, 1941.

[Seal]

JUNE EDDY

Notary Public in and for the County of Los Angeles, State of California.

My commission expires March 1, 1945.

[Endorsed]: Partnership Petition for an Arrangement. Filed Apr. 3, 1941, 2 p. m. R. S. Zimmerman, Clerk, By F. Betz, Deputy Clerk. [14]

[Title of District Court and Cause.]

ORDER APPROVING PARTNERSHIP PETITION FOR AN ARRANGEMENT (CHAPTER XI SECTION 323), FOR DEBTOR IN POSSESSION, DEFERRING REFERENCE HEREIN AND FOR COURT APPEARANCE ON MONDAY, APRIL 21, 1941, AT 2:00 O'CLOCK P. M. ALSO RESTRAINING ORDER.

Upon reading and filing the verified petition of Hubert M. Berlin and Charles T. Russell, doing business as Berlin and Russell Aircraft Machine and Manufacturing Company, a copartnership—hereinafter referred to as “The Debtor”—and it appearing that the debtor has filed a voluntary partnership petition for an arrangement under Chapter XI, Section 323, of the Act of Congress relating to Bankruptcy, and the same having been presented to and considered by this court and it appearing that the petitioners are proper persons and parties to file said petition, and it further appearing that said debtor is solvent but is unable to pay its obligations as they mature and that said debtor desires an arrangement (extension of time in which to pay its debts) and it appearing that the debtor, and particularly Charles T. Russell, the petitioner herein, is engaged in negotiations whereby it seems reasonable to presume that sufficient money will be borrowed by the debtor so that all of the creditors may be paid in full within a reasonable period of

time, and the court being satisfied that said petition has been filed in good faith and being advised in the premises, and no adverse interests appearing,

Now, Therefore, on the motion of Charles Peckham, Esq., attorney for the debtor, [17]

It Is Ordered:

1. That all further proceedings herein, particularly including the order of reference, are hereby continued until Monday, the 21st day of April, at 2:00 o'clock P. M., at which time a hearing will be had in the above entitled court for the purpose of considering the making of an order of reference herein.

2. That said debtor's petition be, and it is hereby, approved as having been filed in good faith and in accordance with the provisions of Chapter XI of the Act of Congress relating to Bankruptcy.

3. That the above-named petitioners (the debtor herein) are to remain in possession and control of the properties, assets and business of the debtor, as is more fully described in the debtor's petition, and shall operate the said business subject to the control of this court, until the further order of a judge of this court, it being particularly ordered that the said debtor is enjoined and restrained from disposing of any or all of the properties, assets and business of the debtor except in the regular course of business.

4. That all other persons, firms and creditors, including all the creditors listed in the debtor's petition, their representatives, attorneys and servants,

and all sheriffs, marshals and other officers and their deputies, representatives and servants, and all other persons whomsoever, be and they hereby are, jointly and severally, enjoined and restrained, until this order is modified, limited, changed or vacated by an order of a judge of this court, from instituting or attempting to institute, or proceeding or attempting to proceed with any suit or action or proceeding of any character whatsoever, involving or affecting the assets, business and property in possession of or owned by the above-named debtor or in which the said debtor has any in- [18] terest; and the aforesaid parties are, and each of them is, further restrained and enjoined from proceeding with any action which may now be pending, or procuring or attempting to procure the appointment of any receiver, or from taking or attempting to take into their joint or several possession or control any of said debtor's assets or properties, or from interfering with or attempting to interfere with, in any way whatsoever, the debtor's ownership or possession of said property, assets or business, or from interfering with or attempting to interfere with, in any way whatsoever, with the debtor's operation of its said business.

5. That a copy of this order is to be mailed to all the creditors of the debtor, on or before 5:00 P. M. on Monday, the 7th day of April, 1941.

Dated: April 4, 1941.

H. A. HOLLZER

Judge of U. S. District Court

[Endorsed]: Filed Apr. 4, 1941. 9:35 A. M. [19]

[Title of District Court and Cause.]

## CLAIM OF UNITED STATES FOR TAXES

State of California

County of Los Angeles—ss.

Nat Rogan, Collector of Internal Revenue for the Sixth Collection District of California, a duly authorized agent for the United States in this behalf, being duly sworn, deposes and says: (1) That the above-named, is justly and truly indebted to the United States in the sum of \$3257.15, WITH INTEREST AND/OR PENALTIES thereon as hereinafter stated; and (2) That the nature of the said debt is internal revenue taxes due pursuant to law as follows:

Nature of Tax	Period	Tax	Penalty	Interest	
				Assessed	Accrued
Federal Insurance Contributions	4 $\frac{1}{4}$ 1940	54.08	As provided by law*		
“ “ “	1 $\frac{1}{4}$ 1941	848.78	“	“	“
“ “ “	1 $\frac{1}{4}$ 1941	400.00	“	“	“
Federal Unemployment	1940	81.12	“	“	“
“ “	1941	1873.17	“	“	“
		<hr/> 3257.15			

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\*The Collector of Internal Revenue should be notified before payment of this claim is made in order that advice may be given as to the correct amount of statutory interest due.

Dated this 9th day of June 1941

NAT ROGAN

Collector of Internal Revenue  
for the Sixth District of California.



Subscribed and sworn to before me this 9th day of June 1941.

[Seal]

T. G. ALBRIGHT

Notary Public

My commission expires Oct. 18, 1944. [21]

[Endorsed]: Filed Jun. 9, 1941 at 45 min. past 2 o'clock P. M. Hubert F. Laugharn, Referee. M. E. Marsh, Clerk M. S.

[Endorsed]: Filed Jun. 10, 1941, 10:36 A. M. R. S. Zimmerman, Clerk. By M. M. Karcher, Deputy Clerk [22]

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[Title of District Court and Cause.]

AMENDED CLAIM OF UNITED STATES FOR  
TAXES

State of California

County of Los Angeles—ss.

Nat Rogan, Collector of Internal Revenue for the Sixth Collection District of California, a duly authorized agent for the United States in this behalf, being duly sworn, deposes and says: (1) That the above-named, is justly and truly indebted to the United States in the sum of \$3,366.32, **WITH INTEREST AND/OR PENALTIES** thereon as hereinafter stated; and (2) That the nature of the said debt is internal revenue taxes due pursuant to law as follows:

Nature of Tax			Period	Tax	Penalty	Interest	
						Assessed	Accrued
Federal Insurance Contributions			4th 1/4 '40	54.08	As provided by law*		
"	"	"	1st 1/4 '41	848.78	"	"	"
"	"	"	2nd 1/4 '41	476.58	"	"	"
Federal Unemployment			1941	1,986.88	"	"	"
				<hr/> 3,366.32			

\*The Collector of Internal Revenue should be notified before payment of this claim is made in order that advice may be given as to the correct amount of statutory interest due.

(I. T. 1746)

Dated this 19th day of August 1941

NAT ROGAN

Collector of Internal Revenue  
for the Sixth District of California

Subscribed and sworn to before me this 19th day  
of August 1941

[Seal]

T. G. ALBRIGHT

Notary Public

My commission expires Oct. 18, 1944 [23]

[Endorsed]: Filed Aug. 21, 1941 12:28 P.M. R. S.  
Zimmerman, Clerk. By M. M. Karcher, Deputy  
Clerk. [24]



[Title of District Court and Cause.]

ORDER FOR HEARING AT 9:30 A. M., AUGUST 2, 1941, ON QUESTION WHETHER DEBTOR IS LIABLE TO FEDERAL UNEMPLOYMENT TAX.

The above entitled matter having come on further to be heard before this Court at 10 o'clock a. m., on July 28th, 1941, pursuant to prior Order of the Court, and the claim of the United States, through the Collector of Internal Revenue at Los Angeles, California, for Federal Unemployment Tax, under Section 1600 of the Internal Revenue Code, as amended, having been called to the Court's attention, which tax the Debtor claims it does not owe, and the Court having suggested that the said question be submitted to it upon an agreed statement or stipulation of facts:

It Is Hereby Ordered that a hearing be had on the said claim for Federal Unemployment Taxes in this Court at 9:30 a. m., Saturday, August 2, 1941.

It Is Further Hereby Ordered that the Collector of Internal Revenue at Los Angeles, California, be notified of such hearing by service being made upon him on or before 5 o'clock p. m., July 30, 1941, which service will be sufficient.

Dated this 30 day of July, 1941.

H. A. HOLLZER,

Judge, United States District  
Court.

Approved as to Form:

CHARLES PECKHAM,  
Attorney for Debtor.  
ARTHUR H. DEIBERT,  
Attorney for Charles T.  
Russell, individually.

July 30, 1941 Receipt Acknowledged.

COLLECTOR OF INTERNAL  
REVENUE,  
By EUGENE HARPOLE,  
By PATRICIA PECK. [25]

[Endorsed]: Filed Jul. 30, 1941.

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[Title of District Court and Cause.]

STIPULATION OF FACTS ON QUESTION  
WHETHER DEBTOR IS LIABLE TO FED-  
ERAL UNEMPLOYMENT TAX.

It is hereby stipulated and agreed by and between counsel for the Collector of Internal Revenue at Los Angeles, California, for the Debtor, and for Charles T. Russell individually, that the following facts are true and correct but that any of the parties hereto may submit further evidence, not inconsistent herewith, at the hearing of this matter before this Court.

1. The Debtor Copartnership of Berlin and Russell Aircraft Machine and Manufacturing Company was formed on November 7, 1940.

2. The payroll of the Debtor from November 7, to December 31, 1940, was \$2,220.66, and if any

Unemployment Tax to the United States and to the State of California jointly was incurred by the Debtor during the said period, said tax was in the amount of \$66.62.

3. That for the first quarter of the calendar year 1941, said quarter ending March 31, 1941, the payroll of the Debtor was \$42,400.17, and if any Unemployment Tax to the United States and to the State of California jointly was incurred by the Debtor during the said period, said tax was in the amount of \$1,272.01.

4. That for the period April 1, 1941, to May 16, 1941, inclusive, (the latter date being the date on which the sale of certain of the assets of the Debtor to Intercontinent Aircraft Corporation became effective by order of this Court, since which time the Debtor has not had any employees) the payroll was \$23,828.88, and if any Unemployment Tax to the United States and to the State of California jointly [27] was incurred by the Debtor during the said period, said tax was in the amount of \$714.87.

5. The Debtor did not file any returns under the Federal Unemployment Tax Act or under the California Unemployment Insurance Act for the reason that it believed it was not liable for the said tax under either of said Acts.

6. From January 1, 1941, to May 16, 1941, inclusive, the Debtor employed 8 or more persons during each week day of that period, with the exception of holidays and some Saturdays.

7. The Debtor has had no employees since certain of its assets were sold to Intercontinent Aircraft Corporation as of the close of business on May 16, 1941.

EUGENE HARPOLE,

Special Attorney,

Bureau of Internal Revenue.

By ARMOND MONROE JEWELL,  
E. H.

Assistant United States  
Attorney.

CHARLES PECKHAM,

Attorney for Debtor.

ARTHUR H. DEIBERT,

Attorney for Charles T.

Russell, individually.

[Endorsed]: Filed Aug. 2, 1941. [28]

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[Title of District Court and Cause.]

MEMORANDUM OF CONCLUSIONS,

Judge Hollzer, Oct. 17, 1941

It appearing that the Collector of Internal Revenue filed a claim herein for Federal Unemployment taxes in the sum of \$1338.23 covering the period extending from January 1, 1941 to May 16, 1941 inclusive; and

It further appearing that said claim has been submitted upon the following agreed statement of facts, to-wit:

1. The Debtor Copartnership of Berlin and Russell Aircraft Machine and Manufacturing Company was formed on November 7, 1940.

2. The payroll of the Debtor from November 7, to December 31, 1940, was \$2,220.66, and if any Unemployment Tax to the United States and to the State of California jointly was incurred by the Debtor during the said period, said tax was in the amount of \$66.62.

3. That for the first quarter of the calendar year 1941, said quarter ending March 31, 1941, the payroll of the Debtor was \$42,400.17, and if any Unemployment Tax to the United States and to the State of California jointly was incurred by the Debtor during the said period, said tax was in amount of \$1,272.01.

4. That for the period April 1, 1941, to May 16, 1941, inclusive, (the latter date being the date on which the sale of certain of the assets of the Debtor to [30] Intercontinent Aircraft Corporation became effective by order of this Court, since which time the Debtor has not had any employees) the payroll was \$23,828.88, and if any Unemployment Tax to the United States and to the State of California jointly was incurred by the Debtor during the said period, said tax was in the amount of \$714.87.

5. The Debtor did not file any returns under the Federal Unemployment Tax Act or under the California Unemployment Insurance Act for the reason that it believed it was not liable for the said tax under either of said Acts.

6. From January 1, 1941, to May 16, 1941, inclusive, the Debtor employed 8 or more persons during each week day of that period, with the exception of holidays and some Saturdays.

7. The Debtor has had no employees since certain of its assets were sold to Intercontinent Aircraft Corporation as of the close of business on May 16, 1941.

The Court Concludes that under the provisions of Sections 1600 and 1607 (a) of the Internal Revenue Code the calendar year extending from January 1 to December 31, inclusive, constitutes the taxable year.

The Court Further Concludes that under the aforementioned provisions of the Internal Revenue Code a week constitutes a period of seven days beginning Sunday morning and ending the following Saturday night and wholly within one and the same calendar year, that a day may be counted as being a day during a taxable (calendar) year only in the event that such day is one of the seven days of one and the same week falling entirely within one and the same calendar year and that the twenty weeks period specified in said Code means twenty calendar weeks, each week beginning on Sunday morning and ending the following Saturday night, [31] and all of such weeks falling wholly within one and the same calendar year.

The Court Further Concludes that since January 1, 1941 fell on a Wednesday and May 16, 1941 fell



on a Friday, such period extending from January 1, 1941 to May 16, 1941, inclusive, constituted less than 20 weeks within the calendar year of 1941.

The Court Further Concludes that said debtor is not subject to the Federal Employment Tax Act, and that the aforementioned claim should be denied.

### MINUTE ORDER

For the reasons set forth in the Memorandum of Conclusions this day filed it is ordered that counsel for the debtor prepare and submit an order in conformity with the same, serving a copy thereof on counsel for the Collector of Internal Revenue.

[Endorsed]: Filed Oct. 17, 1941. [32]

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In the United States District Court  
Southern District of California  
Central Division  
No. 38,270-H Bkey

In the Matter of BERLIN AND RUSSELL AIR-  
CRAFT MACHINE AND MANUFACTUR-  
ING COMPANY, a co-partnership,  
Debtor.

ORDER PROVIDING THAT DEBTOR IS NOT  
SUBJECT TO FEDERAL EMPLOYMENT  
TAX ACT FOR UNEMPLOYMENT TAXES

The above-entitled matter having come on further to be heard on Saturday the 2nd day of

August, 1941, at the hour of 10 o'clock a.m., and notice of said hearing having been given to the Bureau of Internal Revenue of the United States of America, and such notice being deemed by this Court to be sufficient under the circumstances and it having been stipulated by the Debtor through its attorney, Charles Peckham; Charles T. Russell, individually, through his attorney Arthur H. Deibert; the Bureau of Internal Revenue of the United States of America, which said Bureau through the Collector of Internal Revenue has heretofore filed its claim herein for unemployment taxes, through its special attorney Eugene Harpole and also Armond Monroe Jewell, Assistant United States Attorney that:

1. The Debtor Copartnership of Berlin and Russell Aircraft Machine and Manufacturing Company was formed on November 7, 1940.

2. The payroll of the Debtor from November 7, to December 31, 1940, was \$2,220.66, and if any Unemployment Tax to the United States and to the State of California jointly was incurred by the Debtor during the said period, said tax was in the amount of \$66.62.

3. That for the first quarter of the calendar year 1941, said quarter ending March 31, 1941, the payroll of the [34] *of the* Debtor was \$42,400.17, and if any Unemployment Tax to the United States and to the State of California jointly was incurred by the Debtor during the said period, said tax was in amount of \$1,272.01.



4. That for the period April 1, 1941, to May 16, 1941, inclusive, (the latter date being the date on which the sale of certain of the assets of the Debtor to Intercontinent Aircraft Corporation became effective by order of this Court, since which time the Debtor has not had any employees) the payroll was \$23,828.88, and if any Unemployment Tax to the United States and to the State of California jointly was incurred by the Debtor during the said period, said tax was in the amount of \$714.87.

5. The Debtor did not file any returns under the Federal Unemployment Tax Act or under the California Unemployment Insurance Act for the reason that it believed it was not liable for the said tax under either of said Acts.

6. From January 1, 1941, to May 16, 1941, inclusive, the Debtor employed 8 or more persons during each week day of that period, with the exception of holidays and some Saturdays.

7. The Debtor has had no employees since certain of its assets were sold to Intercontinent Aircraft Corporation as of the close of business on May 16, 1941.

And the above-entitled Court having ordered that this said matter of Unemployment Taxes as per the said claim filed herein by the Collector of Internal Revenue be submitted on written briefs and written briefs having been submitted within the time allowed by: (a) the Debtor, and Charles T. Russell, individually, and (b) the Bureau of

Internal Revenue of the United States Government, and the above-entitled matter having been duly and regularly submitted, and the Honorable Harry A. Hollzer, Judge of the above-entitled Court, having made and rendered his memorandum of conclusions on the 17th day of October, [35] 1941,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that under the provisions of Sections 1600 and 1607 (a) of the Internal Revenue Code the calendar year extending from January 1 to December 31, inclusive, constitutes the taxable year.

It Is Further Ordered, Adjudged and Decreed that under the aforementioned provisions of the Internal Revenue Code a week constitutes a period of seven days beginning Sunday morning and ending the following Saturday night and wholly within one and the same calendar year, that a day may be counted as being a day during a taxable (calendar) year only in the event that such day is one of the seven days of one and the same week falling entirely within one and the same calendar year and that the twenty weeks period specified in said Code means twenty calendar weeks, each week beginning on Sunday morning and ending the following Saturday night, and all of such weeks falling wholly within one and the same calendar year.

It Is Further Ordered, Adjudged and Decreed that since January 1, 1941 fell on a Wednesday and May 16, 1941 fell on a Friday, such period extending from January 1, 1941 to May 16, 1941, inclusive,

constituted less than 20 weeks within the calendar year of 1941.

It Is Further Ordered, Adjudged and Decreed that the Debtor herein is not subject to the Federal Employment Tax Act and that the claim of the Collector of Internal Revenue heretofore filed herein for unemployment taxes be, and the same is, hereby denied.

Dated this 31 day of October, 1941.

H. A. HOLLZER,

Judge of the United States District Court. [36]

Approved as to Form:

CHARLES PECKHAM,

Attorney for Debtor.

ARTHUR H. DEIBERT,

Attorney for Charles T. Russell,  
Individually.

EUGENE HARPOLE,

Special Attorney, Bureau of Internal  
Revenue.

ARMOND MONROE JEWELL—E. H.,

Assistant United States Attorney.

O'MELVENY & MYERS,

By MAYNARD J. TOLL,

Attorneys for Intercontinent Aircraft  
Corporation.

[Endorsed]: Filed Nov. 3, 1941. [37]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that the United States of America hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the Order entered in the above entitled debtor proceeding on October 31, 1941, which Order provided that the above entitled debtor is not subject to the Federal Unemployment Tax Act or to unemployment taxes .

Dated: This 19th day of November, 1941.

WM. FLEET PALMER,

United States Attorney,

E. H. MITCHELL,

Asst. U. S. Attorney,

EUGENE HARPOLE,

Special Attorney, Bureau of  
Internal Revenue.

By EUGENE HARPOLE,

Attorneys for United States  
of America.

[Endorsed]: Filed Nov. 21, 1941, R. S. Zimmerman, Clerk. By Edmund L. Smith.

Mailed copies to Debtor's Atty. & Atty. for Russell. E. L. S. [39]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET  
CAUSE ON APPEAL

It Is Hereby Stipulated and Agreed by and between the attorneys for the United States of America and the debtor that, subject to the approval of the Court, the time within which to file the record and docket the above entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby extended to and including the 17th day of February, 1942.

Dated: This 30th day of December, 1941.

WM. FLEET PALMER,  
United States Attorney,  
E. H. MITCHELL,  
Asst. U. S. Attorney,  
EUGENE HARPOLE,  
Special Attorney, Bureau of  
Internal Revenue.

By EUGENE HARPOLE,  
Attorneys for United States  
of America. [41]

CHARLES PECKHAM,  
Attorney for Debtor.  
ARTHUR H. DEIBERT,  
Attorney for Charles T. Rus-  
sell, Individually.

O'MELVENY & MYERS  
By MAYNARD J. TOLL,  
Attorney for Intercontinent  
Aircraft Corporation.

It Is So Ordered this 30th day of December, 1941.

HARRY A. HOLLZER,

United States District Judge.

[Endorsed]: Filed Dec. 30, 1941. [42]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK.

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 42 inclusive contain full, true and correct copies of Petition for Arrangement; Order Approving Petition, that Petitioners Remain in Possession and Restraining Order; Claim of Collector of Internal Revenue; Amended Claim; Order for Hearing; Stipulation of Facts; Memorandum of Conclusions and Order; Order Disallowing Claim; Notice of Appeal; Order Extending Time to Docket Appeal; and Designation of Contents of Record on Appeal which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of the said District Court this ..... day of February, A. D. 1942.

[Seal]

R. S. ZIMMERMAN,

Clerk,

By: EDMUND L. SMITH,

Deputy.



[Endorsed]: No. 10049. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Berlin and Russell Aircraft Machine and Manufacturing Company, a co-partnership, Charles T. Russell and Intercontinent Aircraft Corporation, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed: February 10, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10049

In the Matter of

BERLIN AND RUSSELL AIRCRAFT  
MACHINE AND MANUFACTURING  
COMPANY, a co-partnership,

Debtor.

APPELLANT'S STATEMENT OF POINTS  
TO BE URGED

1. The District Court erred in entering its order dated October 31, 1941, disallowing the claim filed

in the bankruptcy proceeding on behalf of the United States for Federal Unemployment taxes in the sum of \$1,338.23.

2. The District Court erred in failing and refusing to hold that the Debtor was an employer for the taxable year 1941 within the meaning of Section 1607(a) of the Social Security Act Amendments of 1939 by reason of having in its employ eight or more individuals during the required periods of time.

Dated: This 6th day of February, 1942.

WM. FLEET PALMER,  
United States Attorney,  
E. H. MITCHELL,  
Asst. U. S. Attorney,  
EUGENE HARPOLE,  
Special Attorney,  
Bureau of Internal Revenue,  
By EUGENE HARPOLE,  
Attorneys for Appellant,  
United States of America.

Received copy of the within Appellant's Statement of Points to Be Urged this 9th day of February, 1942.

CHARLES PECKHAM,  
Attorney for Debtor  
ARTHUR DEIBERT,

By CGD  
Atty. for Chas. T. Russell,  
individually.



Received copy of the within document Feb. 9, 1942.

O'MELVENY & MYERS,

By (Invalid unless countersigned)

DTG

[Endorsed]: Filed Feb. 10, 1942. Paul P. O'Brien,  
Clerk.

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[Title of Circuit Court of Appeals and Cause.]

#### DESIGNATION OF RECORD FOR PRINTING

The Appellant designates the following as those parts of the Record necessary for the consideration of the points upon which the Appellant intends to rely in this appeal and for printing:

Page 2 of the Record (omitting the title of Court and Cause); pages 3, 4 and 5 of the Record; page 6 of the Record, omitting lines 29 to 32 of said page 6; pages 11 and 12 of the Record; page 13 of the Record (omitting the title of Court and Cause); page 14 of the Record, said pages 2 to 14, inclusive, consisting of a partnership petition for an arrangement under Chapter XI.

Page 17 of the Record (omitting the title of Court and Cause); pages 18 and 19 of the Record, said pages 17 to 19, inclusive, consisting of an Order approving said partnership petition for an arrangement under Chapter XI.

Page 21 of the Record, but omitting therefrom the printed portions of said page composing the

paragraph commencing with the words "Taxable wages \$....." and ending with the words "United States in accordance with their priority" and omitting all matter appearing on page 22 of the Record, except the filing endorsements, said pages 21 and 22 consisting of a tax claim filed on behalf of the United States.

Page 23 of the Record, but omitting therefrom the printed portions of said page composing the paragraph commencing with the words "Taxable wages \$....." and ending with the words "United States in accordance with their priority" and omitting all matter appearing on page 24 of the Record, except the filing endorsements, said pages 23 and 24 consisting of an amended tax claim filed on behalf of the United States.

Page 25 of the Record (omitting the title of Court and Cause) consisting of an order for hearing on the question of whether the debtor is liable to Federal Unemployment Tax.

Pages 27 and 28 of the Record (omitting the title of Court and Cause on said page 27), said pages 27 and 28 consisting of a Stipulation of Facts.

Pages 30, 31 and 32 of the Record, consisting of a Memorandum of Conclusions of the District Judge, but omitting the title of Court and Cause from said page 30.

Pages 34, 35, 36 and 37 of the Record, consisting of the Order herein appealed from, but omitting the title of Court and Cause on said page 34.

Page 39 of the Record, consisting of Notice of Appeal, but omitting the title of Court and Cause.

Pages 41 and 42 of the Record, consisting of an Order extending the time to docket cause on appeal, but omitting the title of Court and Cause on said page 41.

Certificate of the Clerk of the District Court.

Dated: This 6th day of February, 1942.

WM. FLEET PALMER,

United States Attorney,

E. H. MITCHELL,

Asst. U. S. Attorney,

EUGENE HARPOLE,

Special Attorney,

Bureau of Internal Revenue,

By EUGENE HARPOLE,

Attorneys for Appellant,

United States of America.

Received copy of the within Designation of Record for Printing this 9th day of February, 1942.

CHARLES PECKHAM,

Attorney for Debtor

ARTHUR DEIBERT

By CGD

Atty. for Charles T. Russell,  
individually.

Received copy of the within document Feb. 9, 1942.

O'MELVENY & MYERS,

By (Invalid unless countersigned)

DTG

[Endorsed]: Filed Feb. 10, 1942.

